

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuel, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

DISPUTE.—"Claim of the General Committee of The Order of Railroad Telegraphers on the Kansas City Southern Railway that G. G. Dunlap be restored to his regularly assigned position as first-trick in Santa Fe St. Block Office, from which he was improperly displaced on August 22, 1934, by D. F. Thayer, and that all employees resultantly displaced be restored to their regularly assigned positions, and all of them be reimbursed for the difference they would have earned had they not been improperly displaced through the action of the carrier."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Paul Samuel was called in as Referee to sit with this Division.

An Agreement bearing effective date September 1, 1927, governing Working Conditions and Rates of Pay for employees therein designated is shown to exist between the parties.

Prior to August 1, 1934, the carrier maintained a telegraph office known as Air Line Junction, and a non-telegraph tower known as Metropolitan Tower, approximately one mile apart on the Kansas City Terminal Division. The Air Line Junction force consisted of three telegraphers, and the Metropolitan Tower three levermen. Effective August 1, 1934, there was a reduction in forces, and the Air Line Junction office was closed and telegraph wires were cut in at Metropolitan Tower, thus combining the duties of telegrapher-levermen at the latter place.

Prior to August 1, 1934, employees were assigned in the respective offices cited as follows, to-wit:

"Individual qualifications and seniority date.—Metropolitan Tower: D. F. Thayer, Leverman, January 29, 1907; M. A. Edmisten, Leverman-Telegrapher, August 28, 1917; J. W. Register, Leverman-Telegrapher, July 25, 1917. Air Line Junction: J. N. Youkey, Leverman-Telegrapher, January 10, 1913; G. S. Carson, Leverman-Telegrapher, June 25, 1914; Joe Ore. Leverman, Telegrapher, June 17, 1919."

Leverman Thayer, not being a telegrapher, was permitted to displace Telegrapher Dunlap in Santa Fe St. Block Office, which resulted in the displacement of other men.

Petitioner cites Rules 28, 33, and 35 of the Schedule Agreement:

"**RULE 28.** Reductions of force shall be made in the reverse order of seniority in the office affected."

"**RULE 33.** In case of a reduction in force, the regular assigned employees affected may, upon written application within thirty (30) days, if qualified displace any junior employee on the division, provided the position abolished has been in existence for more than ninety (90) days. In case the position has been in existence less than ninety (90) days, the employee so affected will be assigned to the extra list. No allowance will be made for time lost making transfers under this rule."

"Rule 35. An employee bidding in a vacancy and after a fair trial found to be incompetent, will be assigned to the extra list, retaining his seniority."

Leverman Thayer, not being qualified to perform telegrapher service at Metropolitan Tower, on and after August 1, 1934, was required to vacate said position, which was thereupon bulletined in accordance with rules of agreement cited, and the position was awarded to the senior qualified applicant. Thayer's displacement of Block Operator Dunlap, his junior, and resulting displacements therefrom is made the subject of this dispute.

The petitioner claims that Thayer was not affected by a reduction in forces "because of his standing on the seniority roster"; that had he been competent to perform telegraphic service he would have been permitted to remain in his position at Metropolitan Tower; that the three positions at Metropolitan Tower were not abolished but that telegraph duties were merely added to the former duties of levermen; that the agreement between the parties does not give displacement rights to employees who are disqualified for any reason; that there is no rule in the agreement which gives a disqualified employee rights to exercise displacement, and that past agreed to practice provides that disqualified employees shall revert to the extra list.

The carrier maintains that the Air Line Junction telegrapher jobs were simply moved over to the Tower and the tower work added to the telegrapher jobs for the reason that the new jobs at the Tower carried a new title and a new rate, and that the old jobs were, therefore, gone.

Both petitioner and respondent have resorted to hypertechnical interpretations in order to sustain their respective points of view. The background of all agreements is the right of seniority, and the right of seniority should prevail unless a specific agreement runs to the contrary. The yardstick in this dispute appears to be Rule 33. Was there reduction in forces in this dispute? The work at the Air Line Junction was discontinued and the holders of those positions were allowed to displace their juniors. The practical result was that Thayer, who was a regularly assigned employee, was "affected." The petitioner asserts that Thayer would not have been affected if he had been qualified as a telegrapher. However, the agreement between the parties makes no distinction so far as seniority rights are concerned between a telegrapher and a non-telegrapher. Thayer was a qualified leverman, and because of the reduction in forces and his being affected thereby, he was permitted, under Rule 33, to "displace any junior employee on the division." Therefore, it seems clear that Leverman Thayer had the right to displace Leverman Dunlap, his junior.

The petitioner asserts that it has been the practice of the petitioner's organization and the carrier to disregard this rule whenever duties have been added to certain positions where the holder of the position is qualified to handle the work with the added duties. This particular question is not involved in this dispute. Thayer's rights are established under the terms of the contract, and past practices between the employer and the employees should not affect Thayer's seniority rights of twenty-seven years when he chooses to assert them.

If the contentions of the petitioner were to be sustained in this dispute, Thayer would be relegated to the extra list while employees many years his junior would be recipients of regular employment. A contract between the parties permitting such a situation would, of course be sustained by this Division, but we are of the opinion, and so hold, that the contract in this case does not allow the technical construction or interpretation advanced by the petitioner.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 28th day of January 1936.